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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/742,690	12/20/2000	Paul James Davis	C7535(V)	5544

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UNILEVER
PATENT DEPARTMENT
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EDGEWATER, NJ 07020

EXAMINER

RAO, MANJUNATH N

ART UNIT PAPER NUMBER

1652

DATE MAILED: 06/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/742,690

Applicant(s)

DAVIS ET AL.

Examiner

Manjunath N. Rao, Ph.D.

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 May 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☒ Applicant's reply has overcome the following rejection(s): All previous rejections under 35 U.S.C. 112, 2nd paragraph.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attached.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 1-3,5,8,10,12,14 and 17.

Claim(s) withdrawn from consideration: 15 and 16.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____

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Applicants response to the final rejection of the instant application has been considered and entered. However, claims are still not in condition for an allowance as applicants have not overcome all rejections.

While applicants have overcome the previous rejections under § 112, 2nd paragraph, amended claim 2 remains unclear due to the recitation of the phrase "consisting of origin" in line 3. It is not clear to the Examiner as to what applicants mean by the above phrase. Similarly, claim 5 remains unclear due to the recitation of the phrase "or obtained from V_h fragments by a camelization procedure". It appears that applicants meant to recite "obtained by a camelization procedure".

Examiner continues to maintain the rejection of claims 1-3, 5, 8, 10, 12, 14 and 17 under § 112, 1st paragraph as not enabled and not described. This is because applicants continue to direct claim 1 towards "micro-particles which are loaded with a benefit agent". Applicants have not addressed the issue raised by the Examiner as to how those skilled in the art can raise antibodies to micro-particles or micro-particles loaded with benefit agents. Even for the sake of argument, if it is assumed that applicants mean liposome vesicles as micro-particles, or liposome vesicles filled with benefit agents, applicants have not provided guidance as to how one skilled in the art would raise antibodies against such vesicles. By using traditional methods of raising antibodies those skilled in the art would be able to raise antibodies against the liposome vesicles but not to the loaded benefit agents. Applicants simply argue that "no indefiniteness or non-enablement is apparent" which is not persuasive to overcome the above rejections.

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Examiner continues to maintain the rejection of claims 1, 2, 5, 8, 10, 12, 14, and 17 under 35 U.S.C. § 102(b) as being anticipated by Shoseyov et al. Applicants argue that claim 1 still incorporates subject matter of claims 7 and 13 which was not rejected earlier over Shoseyov and they continue to maintain that the amended claims are not anticipated by Shoseyov. Applicants argue that Shoseyov et al. do not teach or suggest any chemical equilibrium constant between the high binding antibody or fragment and the ligand that it binds to. Examiner respectfully disagrees with such an argument. As stated in the previous Office action, Examiner reiterates that such arguments would not be persuasive to overcome the rejection because the inventions are so closely related and Examiner takes the position that the fusion protein in the reference inherently has all the features of the fusion protein claimed in the instant invention even though such limitations are not clearly mentioned in the reference. Since the Office does not have the facilities for examining and comparing applicants' protein with the protein of the prior art, the burden is on the applicant to show a novel or unobvious difference between the claimed product and the product of the prior art (i.e., that the protein of the prior art does not possess the same material structural and functional characteristics of the claimed protein). See *In re Best*, 562 F.2d 1252, 195 USPQ 430 (CCPA 1977) and *In re Fitzgerald et al.*, 205 USPQ 594. Applicants have not presented any arguments against Examiner's assertion.

Based on similar arguments applicants traverse the rejection of claim 3 as obvious over Shoseyov et al. in view of Linder et al. However, as Examiner continues to assert that Shoseyov et al. anticipate claims 1 and 2, claim 3 remains rejected under 35 U.S.C. § 103(a).

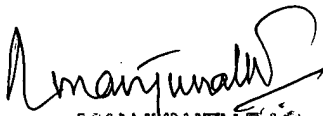
Therefore, none of the claims are allowable.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Manjunath N. Rao, Ph.D. whose telephone number is 703-306-5681. The examiner can normally be reached on 7.30 a.m. to 4.00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ponnathapura Achutamurthy can be reached on 703-308-3804. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4242 for regular communications and 703-308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-0196.


MANJUNATH RAO
PATENT EXAMINER

Manjunath N. Rao
May 30, 2003